

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
HAMILTON COUNTY DEPARTMENT)	
OF EDUCATION and,)	DIVISION OF WATER
RENTENBACH CONSTRUCTORS, INC.)	POLLUTION CONTROL
)	
RESPONDENTS)	CASE NUMBER WPC07-0277
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

II.

The Hamilton County Board of Education (hereinafter “Respondent Hamilton County”) is the owner of property located at 2015 Ooltewah-Ringgold Road, Hamilton County (hereinafter “the site”). Service of process may be made on Respondent Hamilton County through Gary Walter, Assistant Superintendent, at 6703 Bonny Oaks Drive, Chattanooga, Tennessee 37421.

III.

Rentenbach Constructors, Inc., (hereinafter “Respondent Rentenbach”) is an active corporation licensed to conduct business in the state of Tennessee and is contracted by

Respondent Hamilton County to conduct construction activities at the site. Service of process may be made on Respondent Rentenbach through Greg A. Ratcliff, Registered Agent, at 2400 Sutherland Avenue, Knoxville, Tennessee 37919.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction

Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VII.

Hurricane Creek described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Additionally, Hurricane Creek is designated as Exceptional Tennessee Waters due to the presence of the Chickamauga Crayfish.

FACTS

VIII.

On July 17, 2006, a NOI, SWPPP, and appropriate fee were submitted to the Chattanooga Environmental Field Office (CHEFO) by Respondent Hamilton County, requesting coverage under the TNCGP for construction activities at the site. The Division issued coverage under the TNCGP on August 16, 2006.

IX.

On December 12, 2007, division personnel conducted a site inspection and noted that a drilling operation was discharging mud slurry into a sediment basin. The outfall structure of the basin had not been constructed to retain sediment on site and was allowing the mud slurry to be

discharged into Hurricane Creek. Division personnel noted accumulated mud slurry in Hurricane Creek for several hundred feet downstream of the basin outfall.

X.

On December 18, 2007, division personnel conducted a follow up inspection and noted that a small amount of clear water was flowing out of the basin. Significant deposits of mud slurry were noted in Hurricane Creek downstream of the basin outfall.

XI.

On December 26, 2007, the division issued a Notice of Violation (NOV) to both Respondents for the discharge of mud slurry noted during the December 12, 2007, site investigation. The Respondents were instructed to remove the accumulated mud slurry, develop a plan to monitor future drilling activities and address any discharges from such activities, by January 4, 2008. Additionally, the Respondents were instructed to retrofit the basin outlet with a standpipe that would provide the required storage capacity by January 11, 2008, and provide for flocculant usage within the basin for the duration of the project.

VIOLATIONS

XII.

By discharging mud slurry to Hurricane Creek, the Respondents have violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XIII.

By causing a condition of pollution in Hurricane Creek, the Respondents have violated

T.C.A. Section 69-3-114(a).

T.C.A. § 69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 7 days of receipt of this ORDER, complete the removal of accumulated mud slurry from the affected portions of Hurricane Creek. The removal of the mud slurry shall conform to the requirements of the December 26, 2007, NOV and, shall be accomplished in a manner that does not cause additional water quality violations.
2. The Respondents shall, within 14 days of receipt of this ORDER, submit a plan detailing the measures to be implemented to monitor all future drilling activities at the site. The plan shall include a schedule of inspections to be conducted during drilling activities and to immediately cease drilling if mud slurry is discharged off site. The plan shall be submitted to the Water Pollution Control Manager in the CHEFO at Suite 550 – State Office Building, 540 McCallie Avenue, Chattanooga, Tennessee 37402.
3. The Respondents shall, within 14 days of receipt of this ORDER, retrofit the existing basin and provide for flocculant usage as required by the December 26, 2007, NOV. The Respondents shall submit written and photographic documentation of the basin retrofit to the Water Pollution Control Manager in the CHEFO at the above address and copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.

4. The Respondents shall pay a CIVIL PENALTY of TEN THOUSAND DOLLARS (\$10,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000.00).
 - b. If the Respondents fail to comply with Part XIV, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
 - c. If the Respondents fail to comply with Part XIV, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
 - d. If the Respondents fail to comply with Part XIV, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.


The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the

Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 10th day of January 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.